

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1987V

UNPUBLISHED

CHARLEE MITCHELL,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 12, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Kyle Edward Pozza, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On December 30, 2019, Charlee Mitchell filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a Table injury – Shoulder Injury Related to Vaccine Administration (“SIRVA”) – as a result of her October 29, 2018 influenza (“flu”) vaccination. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 7, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On October 6, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$55,669.14. The award is comprised of the following: \$55,000.00 for pain and suffering, and \$669.14 for past unreimbursed expenses. Proffer at 1. In the Proffer, Respondent represented that

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<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$55,669.14 (representing an award of \$55,000.00 for pain and suffering, and \$669.14 for past unreimbursed expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

CHARLEE MITCHELL,	)	
	)	No. 19-1987V
Petitioner,	)	Chief Special Master Brian H. Corcoran
	)	
v.	)	
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On May 3, 2021, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. On May 7, 2021, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, and related sequela.

**I. Amount of Compensation**

Respondent now proffers that, based on the Chief Special Master’s entitlement decision and the evidence of record, petitioner should be awarded **\$55,669.14**. The award is comprised of the following: \$55,000.00 for pain and suffering, and \$669.14 for past unreimbursed expenses. This amount represents all elements of compensation to which petitioner would be entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

## II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made as described below, and request that the Chief Special Master's damages decision and the Court's judgment award the following: <sup>1</sup>

### A. Petitioner's Damages

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$55,669.14, in the form of a check payable to petitioner.

Petitioner agrees.

### B. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

TRACI R. PATTON  
Assistant Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

/s/ Kyle E. Pozza  
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Dated: October 6, 2021